

**BEFORE THE
POSTAL RATE COMMISSION
WASHINGTON, DC 20268-0001**

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POSTAL RATE COMMISSION
OFFICE OF THE SECRETARY**

Complaint on Removal of Collection Boxes

Docket No. C2003-1

**DOUGLAS F. CARLSON
MOTION FOR LEAVE TO REPLY
TO POSTAL SERVICE ANSWER TO COMPLAINT**

December 24, 2002

On December 20, 2002, the Postal Service filed its answer to my complaint on removal of collection boxes¹ and a motion for the establishment of protective conditions² for disclosure of Customer Satisfaction Measurement (CSM) data that, according to the Postal Service, may be "highly germane" to central issues in this proceeding. Answer at 39.

The Postal Service's 42-page answer contains everything one would expect in a motion to dismiss except the words "motion to dismiss." In contrast to its practice in response to other complaints — see, e.g., Docket Nos. C2001-1, C2001-2, and C2001-3 — the Postal Service appears to be exploiting Rule 84 to argue for dismissal of this complaint without providing an opportunity for me to reply to the factual and legal issues that the Postal Service's answer raises. It is unclear whether Rule 84 intends to permit this result.³

¹ Answer of the United States Postal Service ("Answer"), filed December 20, 2002.

² Motion of the United States Postal Service for the Establishment of Protective Conditions ("Motion"), filed December 20, 2002.

³ This motion for leave to reply to the Postal Service's answer does not take issue with the Postal Service's procedural decision to argue in its answer for dismissal of the complaint. Due to ambiguities in Rule 84, the Postal Service does not appear to have violated any procedural rules. The issue at present is whether my request for leave to respond to the Postal Service's answer is required to ensure due process or, if not required, is at least consistent with due process.

Rule 84(b) requires

[a] statement as to the position of the Postal Service on the allegations in the complaint that the rates or service involved are not in accord with the policies of the Act, and the facts and reasons in support of such position.

The use of the word “statement” suggests a relatively brief submission of a summary or assertive nature, rather than the full-blown legal argument that the Postal Service filed.

Rule 84(c) requires the Postal Service to include

[t]he position of the Postal Service on the specific relief or redress requested by the complainant, the disposition of the complaint recommended by the Postal Service, including whether or not a hearing should be held, and a statement of any facts and reasons in support of such position.

Rule 84(c) again uses the word “statement.” In addition, the Postal Service seemingly could comply with Rule 84(c) by stating its “position” on relief or redress and its recommended “disposition” of the complaint in a few sentences.

Rule 84 does not appear to exist to allow the Postal Service to circumvent Rule 21(b). Normally, an opposing party has an opportunity, pursuant to Rule 21(b), to respond to any motion. Since no substantive difference exists between the Postal Service’s answer and a motion to dismiss, due process requires that I have an opportunity to respond. As a useful comparison,⁴ in a normal court proceeding, a party’s answer would be relatively brief and non-argumentative, and the person filing a complaint would have an opportunity to respond to any attempt to dismiss the complaint. While this proceeding is an administrative proceeding, not a court proceeding, under similar standards of due process, my request for an opportunity to respond is far from extraordinary.

The Postal Service’s answer makes clear that key factual disputes exist. I should have an opportunity, for example, to comment on the validity of the Postal

⁴ The Postal Service supports comparisons with “standards of jurisprudence.” See Answer at 20.

Service's assurance that no collection boxes that received 25 pieces of mail or more were removed, Answer at 10, or the accuracy of the data allegedly showing the number of collection boxes that were still in service as of the end of FY 2002. Answer at 23. Moreover, I should have the opportunity to comment on the significance and probative value, if any, of CSM data that the Postal Service files. Similarly, I should have the opportunity to call the Commission's attention to alternative interpretations of the data. This opportunity to comment is critical because, as the Commission observed previously, "Complainants may find themselves at a disadvantage because the Postal Service controls the information necessary to sustain a formal complaint." Order No. 1312 at 2, filed May 7, 2001. Thus, customers who are not receiving services in accordance with the policies of the Postal Reorganization Act may have difficulty obtaining the data necessary to sustain a complaint, particularly before filing the complaint. The Commission is postal customers' last resort for relief when they are not receiving postal services in accordance with the policies of the Act. At minimum, therefore, persons filing service complaints must have an opportunity to comment on data that the Postal Service selectively releases in answering a complaint before the Commission rules on a Postal Service request to dismiss the complaint.

The concern that the Commission observed in Order No. 1312 is perceptive. My library references should aptly demonstrate that not only does the Postal Service control the information necessary to review the propriety of the removal of collection boxes, but the Postal Service also has withheld information that I have sought under the Freedom of Information Act (FOIA) and through correspondence. The first example appears in DFC-LR-3. Exhibit 1 to this motion contains the document that was missing at the time that I filed DFC-LR-3. DFC-LR-3 at 2. In this series of correspondence, I sought volume data under FOIA for collection boxes that the Postal Service removed from service in Santa Clara, California. These data would have tested the assertion in the Postal Service's answer at 10 that no boxes that met the 25-piece minimum were

removed from service. The Postal Service declined to provide the data and, in violation of its own regulations, declined even to provide a reason for withholding the data. Presumably, the Postal Service was prepared to claim that volume data from collection boxes *that have been removed from service* is information of a commercial nature that can be excluded from mandatory disclosure under 39 U.S.C. § 410(c)(2), the Postal Service's favorite, and often abused, exemption from mandatory disclosure of records under FOIA.

Review of correspondence in DFC-LR-3 beginning at page 11 confirms that Roy E. Gamble, the manager of Delivery Support and the postal official who is responsible for national policies related to collection boxes, has engineered a dual-pronged strategy to stymie my inquiries into postal matters. First, as the letter at page 11 reveals, Mr. Gamble is misinterpreting the plain language of my FOIA requests to pretend that I am requesting fee waivers. This example is one of three attempts by Mr. Gamble in August 2002 to misinterpret the plain language of my FOIA requests. I did not even direct any of these FOIA requests to Mr. Gamble's office, but he intervened nonetheless. Mr. Gamble's tactic has delayed processing of my FOIA requests by more than four months. Fortunately, relief is in sight, as the Postal Service soon will need to explain Mr. Gamble's tactic to a federal judge.⁵

For the second prong, Mr. Gamble apparently has taken the novel position that FOIA requesters are entitled to two free hours of search time and 100 free pages of duplication *per issue*, not per FOIA request. In DFC-LR-4, I attempted to obtain documents relating to removal of collection boxes from JFK Airport in New York because the Postal Service was unwilling to explain in any detail why the collection boxes were removed or even to discuss the matter. As the document on page 15 of DFC-LR-4 reveals, Mr. Gamble mysteriously appeared once again, this time advising the Jamaica postmaster and Triboro District on how to reply to my FOIA request. Mr. Gamble's office asserted that I had already

⁵ U.S. District Court, Northern District of California, Civil Action, File No. C02-05471 RMW.

exhausted my two free hours of search time on “collection box issues.” The FOIA statute provides the free search time and duplication for every FOIA *request*, not per issue in the requester’s lifetime. The Postal Service also asserted an absurdly large estimate of search time — 50 hours, or more than five eight-hour days for one employee — at a fee of \$1,070. Assuming the search for documents will be successful, the Postal Service wants me to pay \$1,070 to understand why “September 11, 2001, anthrax and war against terrorism” [sic], DFC-LR-4 at 4, necessitated removal of collection boxes from JFK Airport. Mr. Gamble and the district manager of the Triboro District carefully avoided answering my question as well. *Id.* at 11 and 15. The Postal Service did not respond to my FOIA administrative appeal, and I have already amended my complaint in federal court to include this FOIA request as well.

Finally, the documents in DFC-LR-2 reveal that my attempts to seek a response to concerns about removal of collection boxes in Santa Cruz, California, and changes in collection times were futile.

The purpose of this review of my attempts to obtain information from the Postal Service, informally and under FOIA, concerning removal of collection boxes is to impress upon the Commission the importance of providing me with an opportunity to respond to the Postal Service’s answer to my complaint. The Postal Service controls almost all the information relating to this complaint, and the agency intentionally blocked my attempts to obtain more information prior to filing the complaint. The Postal Service has shown itself to be about as unwilling as one can imagine to provide information to the public on the subject matter of this complaint. In fact, between Docket No. C2001-1 and my FOIA requests in 2002, the Postal Service has effectively tried to establish that collection-box issues are untouchable, even under section 3662, because collection-box locations, posted collection times, and volume data from boxes removed from service are confidential information. At the same time, the Postal Service disapproves of this complaint because the complaint allegedly is “skeletal” and

does not provide sufficient "concrete factual circumstances." Answer at 20. Since I was unable to obtain my own data prior to filing the complaint, at a minimum I must have an opportunity, consistent with due process, to respond to the data that the Postal Service selectively released in its answer.

Lastly, I note that the Commission readily admits pleadings when parties, including the Postal Service, file motions for leave to reply to opposing parties' pleadings. Parties typically file the motion for leave to reply to a pleading at the same time as they file the pleading that they wish the Commission to consider. In the current instance, time is not of the essence because a response does not seem to be appropriate or necessary until the Postal Service files the CSM data that it ultimately may elect to file. Therefore, I am moving now for leave to reply to the Postal Service's answer so that a ruling on this issue can be in place by the time the Postal Service files any CSM data.

Respectfully submitted,



Dated: December 24, 2002

DOUGLAS F. CARLSON

CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon the required parties in accordance with section 12 of the *Rules of Practice*.



DOUGLAS F. CARLSON

December 24, 2002
Santa Cruz, California

EXHIBIT 1



May 13, 2002

Mr. Douglas Carlson
P O Box 7868
Santa Cruz CA 95061-7868

Mr. Carlson,

This is in response to your Freedom of Information Act dated April 1, 2002 for disclosure of certain records. Specifically you requested "records that, individually or collectively, will provide the box address, location ID number, posted weekday and Saturday collection times, and volume of mail collected. For the volume data, please provide only the volume data collected in closest proximity to the removal date of each box. For example, if volume data for a box were collected in both October 2000 and November 2001, and if the box was removed from service in December 2001, I would be requesting the volume data from November 2001 only."

Our regulations, Section 265.9 (f) (3), permit us to require payment of an amount up to the full estimated charge before commencing work on the request. Costs are calculated under our fee regulations (Title 39, *Code of Federal Regulations (CFR)*, Section 265.9, in support of the FOIA as they apply to "other requestors"). The total estimated search and extraction cost for your request is indicated below.

- a) 0.75 hour of personal computer search and extraction time @ \$6.25 per 15 minute segment = \$18.75,
- b) 0.75 hour of personnel search and extraction time on a personal computer @ \$48.00 per hour = \$36.00,
- c) 2.75 managerial hours for manual research @ \$5.35 per 15 minute segment = \$14.71,
- d) 1.0 clerical hour for manual research @ \$4.40 per 15 minute segment = \$17.60, and
printing an estimated 10 of pages @ \$.13 per page = \$01.30.

The total charges to provide you with the information requested is **\$88.36**. Please remit your check or money order to this office made payable to the "U.S. Postal Service" in the amount as indicated above. Upon receipt of your payment, we will proceed with processing this individual request and provide you with the following information:

Inventories for Zip codes 95050, 95051, and 95054 dated 12/9/00, 11/15/00, and 9/13/00 respectively showing the location ID#, address, location description, and last pick up times as indicated on the label of every collection deleted from the database after those dates. Please note that the search and extraction time estimates exclude any mail volumes for the affected collection boxes; as the result of guidance from the law department in Postal Service Headquarters, release of volume information for individual collection boxes is prohibited.

If you construe this response to be a denial of your request, you have the right to appeal in writing to the General Counsel, U.S. Postal Service, Washington, D.C. 20260-1100 within 30 days of the date of this letter. The letter of appeal should include statements concerning this perceived denial, the reasons why it is believed to be erroneous, and the relief sought. Also, please include copies of the original request, this letter, and any other related correspondence.

Sincerely,

A handwritten signature in cursive script that reads "Sue Yeager".

Sue Yeager
Customer Service Analyst

Attachment

cc: Winton A. Burnett, District Manager, Customer Service & Sales
Manager Operations Programs Support
Postmaster, Santa Clara
FOIA Administration Office, L'Enfant Plaza